

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 12, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 09HD-043

HAWAII

Grant of Perpetual, Non-Exclusive Easement; Issuance of Management Right-of-Entry to the Water Board of the County of Hawaii, for Waterline and Related Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-4-01: portions of 7 & 41.

APPLICANT:

Water Board of the County of Hawaii, whose business and mailing address is 345 Kekuanaoa Street, Hilo, HI 96720.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea Cane Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/ 2-4-01: portion of 7 & 41, as shown on the attached map labeled Exhibit A.

AREA:

Easement H-1: 0.784 acres, more or less.
Easement H-2: 0.733 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

TAX MAP KEY/ ENCUMBRANCE/ AREA:

TAX MAP KEY	ENCUMBRANCE	AREA (Acre)
3 rd / 2-4-01: 7	General Lease No. S-4919; University of Hawaii	142.810
	Governor's Executive Order No. 1391 to County of Hawaii, Water Board.	(4.7950)
	Land Office Deed No. S-28,327; Hawaii Electric Light Company.	(5.9210)
	Land Office Deed No. S-28,722; County of Hawaii, Water Board.	(5.4810)
	Land Office Deed No. S-27,585; County of Hawaii, Water Board.	(1.0380)
	Land Office Deed No. S-28,212; Hawaii Electric Light Company.	(8.7980)
	Land Office Deed No. S-28,598; County of Hawaii, Water Board.	(2.1230)
3 rd / 2-4-01: 41	General Lease No. S-4563; University of Hawaii	20.0000

CHARACTER OF USE:

For water lines:
Right, privilege and authority to construct, use, maintain, repair, replace and remove water transmission pipeline over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement relating to the development of the University Park, Aohoku Street and related infrastructure for the subject project was published in the OEQC's Environmental Notice on September 11, 1997 and accepted by the Governor on

December 17, 1997.

DCCA VERIFICATION:

Not applicable. The Applicant as a government entity is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

The subject parcels are currently encumbered under General Lease Nos. S-4563 and S-4919 to the University of Hawaii for expansion of its Hilo Campus, including associated research and instructional projects.

By letter dated March 27, 2009, the University of Hawaii at Hilo, requested a grant of easement be issued to the County of Hawaii, Water Board, for waterline and related purposes. The proposed easement, consisting of two sections, encompasses South Aohoku Street within the University Park area of the University of Hawaii at Hilo Campus. Easement H-1, consisting of 0.784 acres, will overlay TMK: 3rd/2-4-01: portion of 7, and Easement H-2, consisting of 0.733 acres, will overlay TMK: 3rd/2-4-01: portion of 41. The University is currently establishing temporary portable buildings to house its College of Pharmacy until their permanent facilities are developed on an adjacent lot. The portable buildings are expected to be completed this summer, and as such, both the University of Hawaii and the Department of Water Supply request assistance to expedite the request. The University of Hawaii intends to prepare a Bill of Sale for the conveyance of the waterline improvements from the University to the County of Hawaii, Water Board that would be finalized concurrently with the easement issued by DLNR.

The above-proposed easement is consistent with other easements that were already issued in the past over Nowelo Street and North Aohoku Street. Communications between the University of Hawaii and the County's Department of Water Supply is ongoing as this easement will be integrated into the County's existing water system already in place along Nowelo and North Aohoku Street.

The County of Hawaii has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies were solicited for comments.

AGENCIES	COMMENTS
County of Hawaii:	
Planning	No objections
Public Works	No response
Water Supply	No response
State of Hawaii:	
DLNR-HP	No objections
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	See comments, "Exhibit B"

The Office of Hawaiian Affairs had no objections to the issuance of an easement to the Water Board of the County of Hawaii, but, "requests that rather than a grant of perpetual easement, a grant of easement for term should be provided. Thus, the use of these significant lands can be regularly re-evaluated. OHA also asks that should a long-termed easement be granted, the record of the easement reflect its ceded land status to help assure that an accurate inventory of these lands can be maintained."

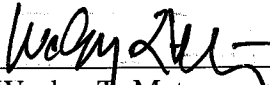
RECOMMENDATION: That the Board:


1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to the Water Board of the County of Hawaii covering the subject area for waterline and related purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a management right-of-entry permit to the Water Board of the County of Hawaii, its consultants, contractors, and/or persons acting for or on its behalf, covering the subject area under the terms and conditions cited

above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
- B. This management right-of-entry is effective upon Land Board approval and shall continue until the grant of easement document is executed;
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent 

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 

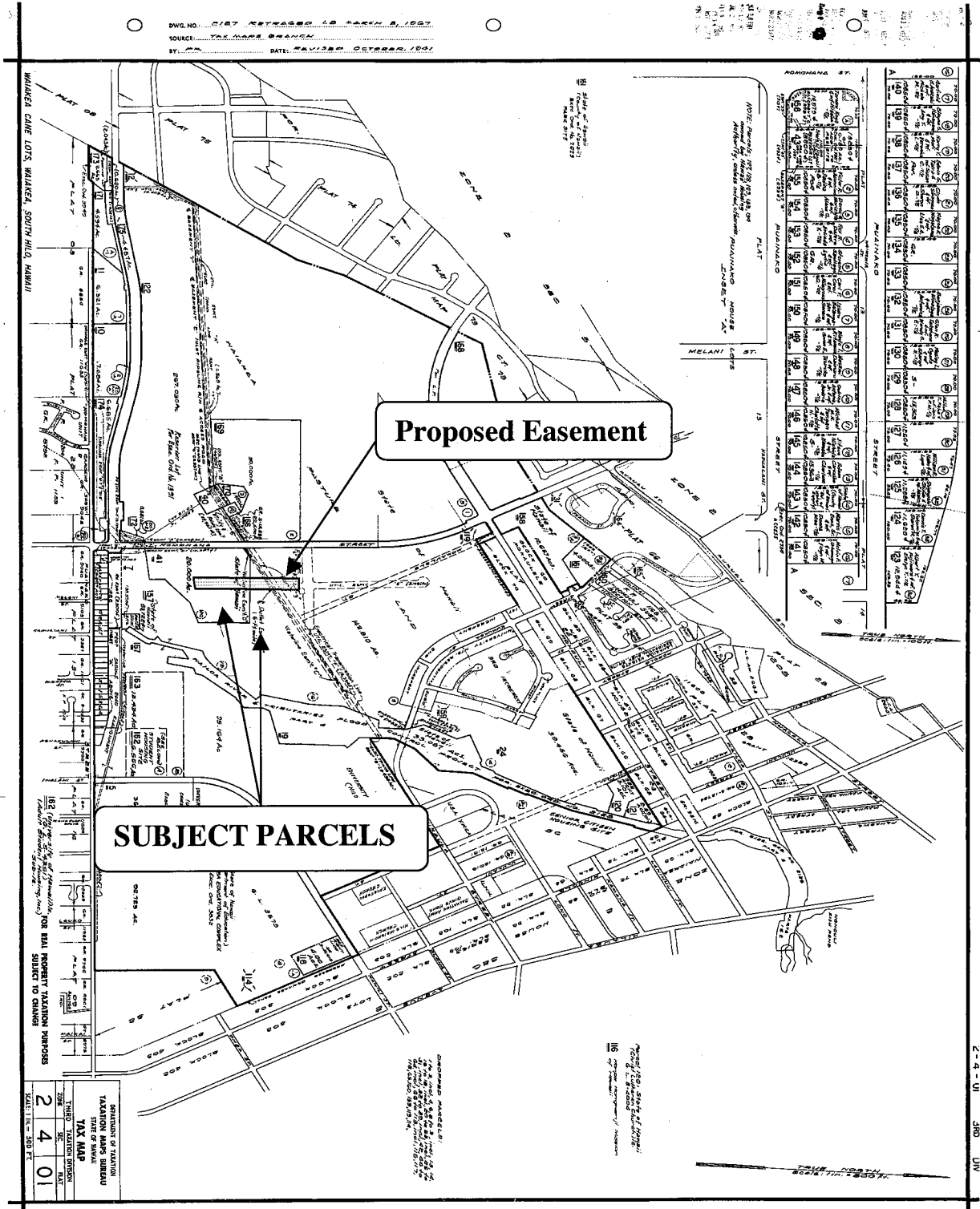


EXHIBIT A

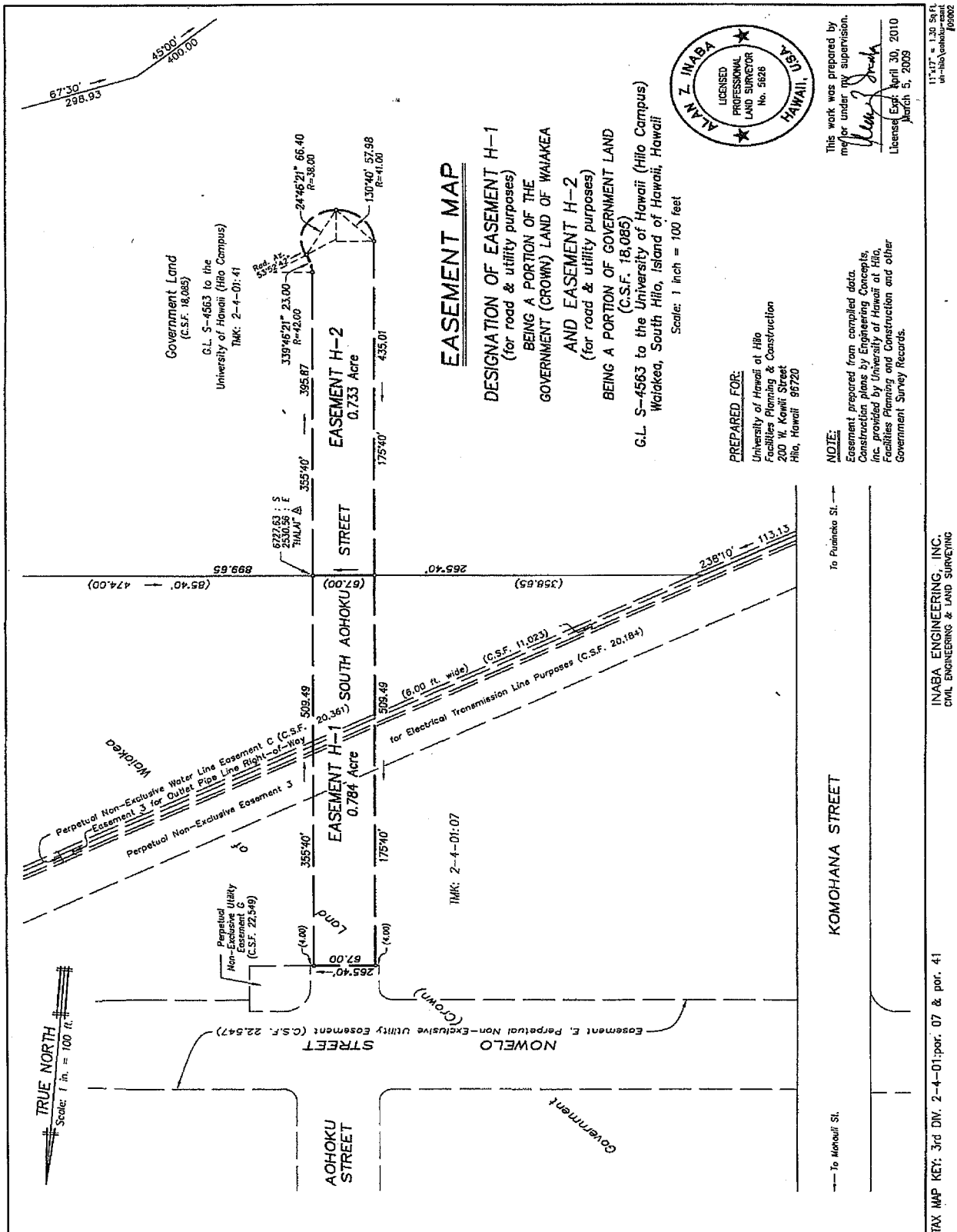


EXHIBIT A

PHONE (808) 594-1888

FAX (808) 594-1865



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

2009 MAY 19 A 10:10
RECEIVED
LAND DIVISION
HILO, HAWAII

HRD09/3158C

May 8, 2009

Wesley Matsunaga, Land Agent
Department of Land and Natural Resources
Land Division
75 Aupuni St., Room 204
Hilo, HI 96720

**RE: Request for Grant of Perpetual, Non-Exclusive Easement to the County of Hawai'i;
Issuance of Management and Construction Right-of-Entry for Waterline and
Related Purposes at Waiakea, South Hilo, Hawai'i Island; TMK: (3) 2-4-001: 007
and 041; Ref. No.: 09HD-043.**

Aloha e Wesley Matsunaga,

The Office of Hawaiian Affairs (OHA) received the above-mentioned letter on April 20, 2009. According to the document, the County of Hawai'i requests two easements: easement H-1 is approximately 0.784 acres, and easement H-2 is approximately 0.733 acres. Both easements would be used to construct, use and maintain a water transmission pipeline. Currently both parcels of land are under lease to the University of Hawai'i, which intends to prepare a Bill of Sale to the County of Hawai'i, Water Board, for the improvements. The proposed easement H-1 is located on ceded lands. OHA apologizes for the delayed response, has reviewed the proposed project and offers the following comments.

OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for its beneficiaries, the people of this land. The Hawaii Revised Statutes mandate that OHA "[s]erve as the principal public agency in the State of Hawaii responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; . . . and [t]o assess the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians." (HRS § 10-3) Equally, it is "the duty and responsibility of all state departments and instrumentalities of state government providing services and programs which affect native Hawaiians and Hawaiians to actively work toward the goals of this chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs." (HRS § 10-1(b))

EXHIBIT B

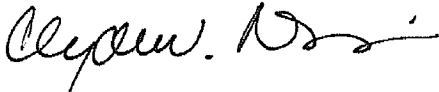
Wesley Matsunaga, Land Agent
May 8, 2009
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OHA notes that the proposed easement E-1 is designated as Section 5(b) Ceded Lands, which hold a considerable amount of sentimental, historical and legal significance for Native Hawaiians and OHA. These lands were illegally taken from the Hawaiian Kingdom after the 1893 overthrow and later transferred ("ceded") by the United States government to the State of Hawai'i upon statehood. Today, the state holds the ceded lands corpus in trust for Native Hawaiians and the general public.

To insure the best use of ceded lands, OHA requests that rather than a grant of perpetual easement, a grant of easement for term should be provided. Thus, the use of these significant lands can be regularly re-evaluated. OHA also asks that should a long-term easement be granted, the record of the easement reflect its ceded land status to help assure that an accurate inventory of these lands can be maintained.

Thank you for the opportunity to comment. If you have further questions, please contact Heidi Guth by phone at (808) 594-1962 or e-mail her at heidig@oha.org.

'O wau iho nō me ka 'ōia'i'o,



Clyde W. Nāmu'o
Administrator

C: OHA Hilo Community Resources Coordinator

EXHIBIT B